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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048271
Party	Plaintiff Rhino Linings USA, Inc.
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Date	10/27/2008
Attachments	RALEIGH- #115907-v1-Notice_of_Withdrawal_of_Request_for_Additional_discovery.pdf ( 4 pages )(26748 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407  
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No. 92048271
	)	
RAPID RACK INDUSTRIES, INC.,	)	
Registrant.	)	
	)	

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**NOTICE OF WITHDRAWAL OF MOTION TO EXTEND THE DISCOVERY  
DEADLINE TO ALLOW PETITIONER TO CONDUCT FOLLOW-UP DISCOVERY**

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Petitioner Rhino Linings USA, Inc. ("Petitioner"), acting by and through the undersigned counsel, hereby respectfully gives notice that it is withdrawing its Motion to Extend the Discovery Deadline to Allow Petitioner to Conduct Follow-up Discovery submitted as part of the combined motions filed by Petitioner on September 5, 2008 and re-submitted on September 19, 2008 with redactions (Docs. Nos. 9, 12). Petitioner is not withdrawing the Motion to Compel Discovery Responses, Motion to Deem Requests for Admissions Admitted, or Motion for Sanctions, which were also submitted as part of Petitioner's combined motions filed and resubmitted on the same dates. The grounds for this Notice are as follows:

First, at the time Petitioner filed the combined motions, Petitioner was seeking resolution of the parties' discovery dispute and receipt of amended discovery responses from Rapid Rack prior to the occurrence of Rapid Rack's Rule 30(b)(6) deposition. Rapid Rack's actions had the result of delaying resolution of the combined motions inasmuch as it treated the resubmitted combined motions as an amendment that impacted Rapid Rack's twenty-day response period, and thereafter sought additional delay by moving for an extension of time to respond to the combined motions.

Second, in accordance with the Board's Order of September 15, 2008 (Doc. No. 10), Petitioner proceeded with the Rule 30(b)(6) deposition of Rapid Rack on September 26, 2008. Although Rapid Rack improperly refused to testify with respect to numerous topics listed in the Rule 30(b)(6) deposition notice (resulting in the filing of a Second Motion for Sanctions (Docs. Nos. 17, 18)), the evidence provided by the designee who testified on behalf of the company with respect to the remaining topics establishes that Petitioner is entitled to summary judgment, such that additional discovery is not required.

Third, although Rapid Rack's written discovery responses are comprised mostly of evasive answers and inapplicable objections made to avoid acknowledging abandonment of the RHINO RACK Mark and fraud on the Trademark Office, Rapid Rack's response to the combined motions (Doc. No. 20) essentially indicates that Rapid Rack has no additional substantive information. Rapid Rack should be required to provide appropriate, internally consistent discovery answers. However, in light of Rapid Rack's indication that it has no additional evidence to produce, follow-up discovery is no longer necessary.

Fourth, the withdrawal of the Motion to Extend the Discovery Deadline to Allow Petitioner to Conduct Follow-up Discovery does not obviate Petitioner's request for the Board to rule in Petitioner's favor on the Motion to Compel Discovery Responses, Motion to Deem Requests for Admissions Admitted, or Motion for Sanctions. Although the substantive information provided by Rapid Rack demonstrates that it cannot withstand a motion for summary judgment by Petitioner, Rapid Rack has made numerous refusals to provide additional evidence of abandonment and fraud on the Trademark Office by relying on inappropriate objections and making evasive answers. Further, Rapid Rack refused to make a good faith effort to resolve the discovery disputes in this case without burdening the Board. Rapid Rack should be required to correct its answers, should be deemed to have admitted Petitioner's Requests for Admissions, and should be sanctioned for its discovery abuses.

**WHEREFORE**, Petitioner hereby withdraws its Motion to Extend the Discovery Deadline to Allow Petitioner to Conduct Follow-up Discovery and respectfully requests that the Board consider and grant the Motion to Compel Discovery Responses, Motion to Deem Requests for Admissions Admitted, and Motion for Sanctions and allow Petitioner such other and further relief as the Board deems just, necessary, and proper.

Respectfully submitted this 27<sup>th</sup> day of October, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: /Joseph S. Dowdy/

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

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This, the 27<sup>th</sup> day of October, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

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